

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**  
**ELCLC NO E061 OF 2025**

**NICHOLUS LEWA KALAMA & ANOTHER .....  
PLAINTIFFS**

**VERSUS**

**THE ATTORNEY GENERAL AND & 7 OTHERS .....  
DEFENDANTS**

**RULING**

1. On 21<sup>st</sup> January this court dismissed the 4<sup>th</sup> and 5<sup>th</sup> defendants Notice of Preliminary Objection dated 23<sup>rd</sup> September 2025 seeking the striking out of the entire suit. The next item to be considered was the application dated 9/6/2025. The same seeks an injunction restraining the defendants from in any manner entering, trespassing into, cultivating building selling disposing of and/or interfering in any way whatsoever with the plaintiff's possession and quiet enjoyment of the suit property measuring about 18.9463 ha. And known as Kilifi/ Pingilikani /151,162,274,275,507, & 573.

In its decision on the preliminary objection this court stated as follows:

*"The plaintiff's case has been brought by a way of plaint dated 9<sup>th</sup> June 2025 which seeks declarations that the deceased were bona fide proprietors of the previous ancestral land whose measurements are expressly stated, now surveyed and titled variously as numbers Kilifi/ Pingilikani/151, 162, 274, 275, 547, and 573. The claim is premised on fraud. The plaintiffs stated that adjudication occurred in the year **1995**, but titles issued in the year **2023** after a long wait and after the deceased had already passed on. That is when they land that the deceased had been left with only a small registered portion that at the edges of their property which had been illegally divided amongst the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> defendants. Their claim is that the local liaison committee had in the year 1995 properly identified the suit property boundaries and the extent of the suit property but the actual titles*

*released in the year 2023 after incessant demands and apparently deliberate delay at the Kilifi Land Registry did not reflect reality on the ground. When they followed up on the emergence of new owners, it was established that adjudication objection proceedings had been deliberately mixed up fraudulently undertaken in the names of deceased persons or non-owners or fictitious parties in respect of the several parcels of the suit property in order to give a sense of formality and apparent legality to the titles obtained by the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> defendants; that in 2025, they were summoned to the Directorate Of Criminal Investigations where the officer in charge of the supposed to investigations demanded to see their titles and purported to supervise new subdivisions and erection of beacons on the suit property under the watch of armed police despite protestations by the plaintiffs.*

*I think in the circumstances disclosed herein above, this is not a suit that can be said to be contrary to the provisions of Sections 29 and 30 of the Land Adjudication Act. The plaintiffs admit that adjudication was done, but also aver that there was some kind of fraud that caused the greater portion of their land to be hived off and appropriated by the 4<sup>th</sup> to 8<sup>th</sup> defendants long after the adjudication process had been completed. They claim that beaconing of the land was done as recently as the year 2025, which pleading also ousts the claim that the suit is time barred. Ground a), b), and c) of the Notice of Preliminary Objection dated 23<sup>rd</sup> September 2025 have been thus answered and they must fail.*

*Regarding indefeasibility as the first registered owners, it is clear that the provisions of the Land Registration Act under which the title in the year 2025 was issued do not exclude any title from challenge on the basis of fraud, not even a first registration title. The matters regarding fraud claimed by the plaintiffs would have to be investigated, with the background being their claim that the land was their ancestral land that was adjudicated properly and stolen between the date of adjudication in 1995 and the date of issuance of title to the extent that the resultant misappropriated portions were being beaconed in 2025, and so the claim of extinction of their rights does not therefore arise. This court would be in a position to order, if such fraud was proved at the hearing, that the titles issued to the 4<sup>th</sup> to the 8<sup>th</sup> defendants be cancelled."*

2. Owing to what this court stated in the ruling on the Preliminary objection as set out verbatim herein above, and the holding in *Nguruman Limited vs Jan Bonde Nielsen & 2 others*, 2014 eKLR that a party must show a right which is threatened and needs to be protected, I think that the plaintiffs

have done exactly that. It is clear that the plaintiffs have satisfied the limb of a *prima facie* case as one of the conditions set out in the case of *Giella Vs Cassman Brown 1973 EA 358*.

3. As to whether the next limb has been met, the court notes that if the suit property is disposed of by the defendants the same may be taken away from the applicant's reach and may further complicate the present litigation and protract it unnecessarily. There is therefore need to preserve the same pending the hearing and determination of the suit.
4. The upshot of the foregoing is that the application dated 9/6/2025 has merit and the same is allowed to the extent that the status quo prevailing over the parcels of land known as **Kilifi/Pingilikani /151,162,274,275,507, & 573** shall remain undisturbed by any of the parties until the final hearing and determination of the present suit.

**Dated, signed and delivered at Malindi on this 27<sup>th</sup> day of April, 2026.**



**MWANGI**  
**NJOROGE,**  
**JUDGE, ELC MALINDI.**